

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CHARLES L. RHODES,

Plaintiff,

-against-

DEUTSCHE BANK NATIONAL TRUST COMPANY
AS TRUSTEE FOR MORGAN STANLEY ABS
CAPITAL I INC. TRUST 2006-HE3, AMERICA'S
SERVICING COMPANY, WMC MORTGAGE CORP.,
MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC. AT MORTGAGE, INC. DBA 1ST
CAPITAL HOME MORTGAGE, ABC CORP., DEF
CORP., and/or JOHN DOES, 1-10,

Defendants.

X

:

: ECF Case

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: Case No.: 07-cv-1544 (ERK)

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: **ANSWER TO**

: **AMENDED COMPLAINT**

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Defendant, Deutsche Bank National Trust Company, as Trustee for Morgan Stanley ABS Capital I Inc. ("Deutsche Bank"), by its undersigned attorneys hereby responds upon information and belief as to the allegations in the Amended Complaint.

PRELIMINARY STATEMENT

1. Declines to plead to the legal conclusions set forth in Paragraph 1 of the Amended Complaint and respectfully refers the Court to the pleading in this action.

2-3. Declines to plead to the legal conclusions set forth in Paragraphs 2 and 3 of the Amended Complaint.

PARTIES

4. Denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 4 of the Amended Complaint.

5. Admits.

6. Admits.

7. Admits.

8. Denies, except admits that ABS Capital maintains a business address at 1585 Broadway, New York, New York.

9. Denies acknowledge or information sufficient to form a belief as to the allegations contained in Paragraph 9 of the Amended Complaint.

10. Denies acknowledge or information sufficient to form a belief as to the allegations contained in Paragraph 10 of the Amended Complaint.

11. Denies acknowledge or information sufficient to form a belief as to the allegations contained in Paragraph 11 of the Amended Complaint.

12. Denies acknowledge or information sufficient to form a belief as to the allegations contained in Paragraph 12 of the Amended Complaint.

13. Denies acknowledge or information sufficient to form a belief as to the allegations contained in Paragraph 13 of the Amended Complaint.

RESPONSE TO FACTUAL ALLEGATIONS

14. Denies, except admits that a closing on a residential loan by and between the Plaintiff and various parties to this action occurred on or about January 5, 2006.

15. Denies, except admits that the transaction in question pertains to mortgages upon a residential property for which Plaintiff claimed ownership.

16. Admits.

17. Admits.

18. Denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 18 of the Amended Complaint, except admits that 1st Capital and WMC participated in the transaction in question.

19. Denies, except admits that WMC retained a security interest in the subject property.

20. Denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 20 of the Amended Complaint.

21. Admits.

22. Admits.

CLAIMS

AS AND FOR A RESPONSE TO THE FIRST CLAIM (DECLARATORY JUDGMENT)

23. Defendant repeats and realleges each and every response heretofore set forth.

24. Declines to plead to the legal conclusions contained in Paragraph 24 of the Amended Complaint.

25. Denies the allegations contained in Paragraph 25 of the Amended Complaint.

26. Denies the allegations contained in Paragraph 26 of the Amended Complaint.

27. Denies acknowledge or information sufficient to form a belief as the allegations contained in Paragraph 27 of the Amended Complaint.

28. Denies acknowledge or information sufficient to form a belief as the allegations contained in Paragraph 28 of the Amended Complaint.

29. Denies acknowledge or information sufficient to form a belief as to the allegations contained in Paragraph 29 of the Amended Complaint.

30. Denies.

31. Admits as to the Defendant, Deutsche Bank. Denies acknowledge or information sufficient to form a belief as to the remaining Defendants.

32. Denies.

33. Denies and declines to plead to the relief sought by the Plaintiff in this Paragraph.

**AS AND FOR A RESPONSE TO THE SECOND CLAIM
(VIOLATION OF TILA-FAILURE TO RESPONSE TO RESCISSION)**

34. Defendant repeats and realleges each and every response heretofore set forth.

35(a)-(d). Denies each and every allegation set forth in Paragraph 35(a)-(d) of the Amended Complaint.

**AS AND FOR A RESPONSE TO THE THIRD CLAIM
(COMMON LAW FRAUD AGAINST WMC AND 1ST CAPITAL)**

36. Defendant repeats and realleges each and every response heretofore set forth.

37-52. Declines to plead the legal conclusions set forth in Paragraphs 37-52 of the Amended Complaint and denies knowledge or information sufficient to form a belief as to the factual allegations contained therein.

FIRST AFFIRMATIVE DEFENSE

Plaintiff fails to state a cognizable claim under TILA.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claim for money damages under TILA is time barred.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claim for rescission under 15 USCS § 1635 is defective, as Plaintiff/borrower failed to make restitution of amounts expended by the lender.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claim for rescission is time barred.

FIFTH AFFIRMATIVE DEFENSE

Pursuant to 15 USCS § 1640(c), Deutsche Bank as assignee of WMC is not liable for a bona fide disclosure error, as there were procedures reasonably adapted to avoid such clerical errors.

SIXTH AFFIRMATIVE DEFENSE

Section 130 of TILA (15 USCS § 1640) provides for only a single recovery for failure to disclose even when there are multiple creditors.

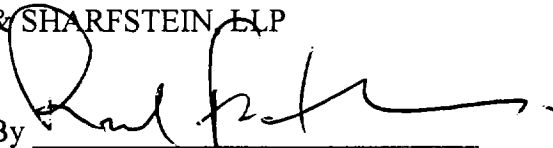
SEVENTH AFFIRMATIVE DEFENSE

Under 15 USCS § 1640, Plaintiff must prove a direct causal relationship between the amount of damages claimed and the injury from the alleged non-disclosure.

WHEREFORE, Defendant, Deutsche Bank National Trust Company respectfully requests that the Court enter a judgment dismissing this action in its entirety together with an order for such other and further relief as to which this Court deems just, proper and equitable.

Dated: Mineola, New York
September 11, 2007

WESTERMAN BALL EDERER MILLER
& SHARFSTEIN LLP

By 

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National Trust Company, as Trustee for
Morgan Stanley ABS Capital I Inc.

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: **AFFIDAVIT OF SERVICE**

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

JOANNE CONNELL, being duly sworn, deposes and says:

I am over eighteen years old, am not a party to this action and reside in Hicksville,
New York.

On September 11, 2007, I caused to be served a copy of the within Answer to
Amended Complaint by mailing the same, regular mail via United States Mail postage
prepaid, to the following parties at the addresses as indicated below by depositing same
in an official depository of the U.S. Postal Service within the State of New York and
County of Nassau:

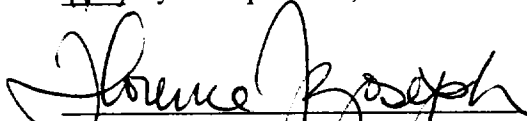
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Attorneys for WMC Mortgage Corp.

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Steinberg & Cavaliere, LLP
50 Main Street
White Plains, New York 10606
Attorneys for 1st Capital Home Mortgage


Joanne Connell

Sworn to before me this
10th day of September, 2007


Notary Public

FLORENCE JEAN-JOSEPH
Notary Public, State of New York
No. 41-5010171
Qualified in Queens County
Commission Expires 9/13/2009